

**Before the
Federal Communications Commission
Washington DC**

In the Matter of:

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)	
Request for Review of decision)	
by the Schools and Libraries Division)	Administrator Correspondence Dated
for the Lincoln County School District)	March 20, 2012
)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Appeal Review and Waiver

Lincoln County School District
BEN: 126689
FCC RN: 0012448890
Form 471 Number: 809485
Form 470 Number: 166280000863046
Funding Request Numbers: 2216623, 2216855 and 2217092

Background

Lincoln County Schools is a small, rural county in Southern West Virginia. The technology director oversees the technology network, purchases and plans for school technology using both local and state funds, maintains the technology budget, acts as the county contact for all virtual classes, maintains and operates the county webpage, and files and manages the E-rate for the county.

During the 2011 funding year, the director filed a Form 470 and RFP for telecommunications services to establish a wide area network (WAN) for the entire county. He utilized a template provided by the West Virginia Department of Education (WVDE) Office of Instructional Technology that he modified for his county situation and included details for each school and location. The requested service was filed under the Telecommunications category on the Form 470 and indicated as such also in the RFP.

Up until late September 2010, when the FCC's Sixth Report and Order began allowing schools and libraries to purchase data line connections from any provider, counties in West Virginia were required to purchase only Telecommunications lines due to the way the statewide K-12 network operated. In this network, schools use basically point-to-point connections to the state network Points of Presence (POPs) where they are filtered and then connected to the public Internet. The West Virginia Department of Education applies for the state network backbone connections, as well as, the Internet Access to the public Internet on behalf of the schools. This not only provides all counties a more cost-effective method by which to access the Internet and the statewide information system (which is required by state legislation), but also allows the state to filter and oversee network management.

Mr. Dailey had previously submitted a Form 470 and RFP in 2010 with the exact same request as his 2011 requests and received no responses for Broadband Ethernet services. The only response was from Verizon Business suggesting bundled T-1 line that were not a cost-effective solution for a Wide Area Network (WAN) and only offered at the maximum offering 6.11 MB of connectivity when 10-100 MB speeds were requested. Immediately prior to the 2011 funding year, the FCC released the Sixth Report and Order which then allowed Internet Access companies to provide fiber services to schools without the requirement of being a telecommunications company. Since the WVDE provides the Internet Access at the two points-of-presence, historically, schools were instructed to only use Telecommunications Services during the prior funding years. Additionally, the previous FCC rules restricted content on the network to only data (excluding voice and video) unless the provider was an Eligible Telecommunications Provider. When the 2011 Form 470 window became available, the director erroneously submitted a Form 470 identical to the 2010 Telecommunications Form 470 and the same RFP as in FY 2010. He unintentionally did not including Internet Access as an option, similar to a Bishop Perry ministerial error. He was seeking a service provider who could offer him bandwidth at speeds higher than bundled T-1 services. His former promised rate on the State Master Contract was 768 kb per T-1 with the potential to burst up to 1.5 Mb.

In Funding Year 2011, Armstrong Cable responded to district's RFP with a partial solution for the district. There were some schools that were out of their service area. Danny hoped to satisfy the outlying schools with bonded multi-linked frame relay T-1s until fiber expansion could serve those areas. The service provider cited to the district technology director that the new Sixth Report and Order would allow them to provide services despite their lack of the Telecommunications designation. During discussions with the provider, the state E-rate coordinator emphasized that there were issues with the fact that the Form 470 did not include Internet Access as a category for which Lincoln County sought services. The sales representative for the vendor said that the Telecommunications arm of Armstrong could be the service provider for the WAN. During that conversation, the director was under the impression that this was possible and filed his application using Telecommunications as his category of service and Armstrong Telephone (who is an eligible Telecommunications provider and provides his telephone services) as the service provider for the WAN.

Since that time, Armstrong Cable has informed the district that they are unable to provide services under the telecommunications arm of their company as this would violate regulatory requirements. The technology director attempted to do a change during his Form 471 Receipt Acknowledgement Letter (RAL) to Internet Access and to the Armstrong Cable SPIN (which is not a registered Telco).

In the meantime, Armstrong installed the fiber for the wide area network and Lincoln County has paid in full the up-front one-time installation charges. Originally, the Lincoln County requested E-rate for a connection to the state K12 network POP. This was supposed to be provided via the State Master Contract. After submission of their application, and upon request for the connection, the state contract holder made the district aware that this would not be available until after federal BTOP funding was approved and fiber was installed by the state contract holder to that area. Armstrong also has aided Lincoln County in resolving a method for bringing the WAN to the state POP since the state master contract holder was unable to provide that service all the way to the county. The WAN is now fully operational, albeit behind schedule, and the county has received billings from Armstrong Cable.

During PIA review, it came to the reviewer's attention that the district did not file the FY 2011 Form 470 with the WAN in the Internet Access category and subsequently denied Lincoln County School's E-rate Funding Requests.

The district attempted to navigate a very complex technology project with multiple hurdles that have affected the timing and installation of the WAN. They have done their due diligence in attempting to competitively bid for a service provider who could provide them the higher bandwidth they sought at the request of the State Department of Education. The sole respondent to their Form 470 and RFP was selected and the County proceeded with their E-rate application to reflect information they thought would cure the issue relating to the requirements for applications under the Telecommunications category. The sales representative for the service provider misunderstood the process by which a Telecommunications provider could provide services under regulatory restrictions and told the District that the services could be provided by the Armstrong Telecommunications provider when they were selected the winning vendor. You will note that none of the bid responses by Armstrong contain information that would lead the district to believe that they were not an eligible Telecommunications provider. The district was later informed by Armstrong Cable that the Telecommunications arm of the company would be unable to participate in the plan to cure the issue.

During the FY 2012 Form 470 competitive bidding process where the district posted under both categories, **no other vendors** from either category responded to the bid. Armstrong was the sole bid. Furthermore, there was no waste, fraud or abuse involved with this error.

Of interest, the State E-rate Coordinators Alliance (SECA) filed comments with the FCC on this very issue of Priority 1 service selection. As part of its suggestions for the 2008 Eligible Services List, SECA requests the Commission to, "direct USAC that for the purpose of PIA review, it does not matter which Form 470 category of service is chosen as long as a service is listed in one or the other Priority 1 category." Their full comments further explain their rationale for this request. (Re: Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6 Comments to Proposed Eligible Services List, Public Notice Released July 27, 2007 (FCC 07-130). Comments of the State E-rate Coordinators' Alliance. Filed August 10, 2007.

(http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519610639))

Discussion

USAC's decision to deny was based on the fact that the originating Form 470 that established the competitive bidding process for these FRNs did not include service of this [Internet Access] type; therefore it was determined that the FRNs did not meet the 28 day competitive bidding requirement.

While the Form 470 instructions do state that **"you cannot seek discounts for a category of service you have not competitively bid on the Form 470,"** we also believe that the inclusion of **"This requirement is not intended to restrict your ability to enter into a contract for new services or select a service provider"** in the instructions, the fact that no other service provider has bid on the FY 2011 OR 2012 Form 470 *and* the fact that an Internet Access provider did indeed bid on this request, despite it being posted solely in the telecommunications category, shows that the competitive bidding process was met in this particular situation. The lack of information under the Internet Access category did not prevent the cable company from bidding—and the inclusion of the category in the FY 2012 Form 470 did not bring forth any other service provider bids, but Comcast did request the RFP information and elected not to respond to the bid.

Based on the Form 470 instructions, it would appear that while the intention of the competitive bidding application process is to ensure that all providers are equally aware of services requested, in *this* particular situation, it has been proven that 1) the non-telecom cable provider was aware and bid on the service, regardless of the fact that only the telecommunications category cited services sought and 2) the FY 2012 Form 470 bid request did not solicit any bids from any eligible telecom or other Internet Access category providers; therefore, the presumption can be made that regardless of the school district's category selection, their end result and available vendors would have been the same.

If, according to the Form 470 instructions, the data in Items 8-11 is "not intended to restrict [the applicant's] ability to enter into a contract for new services or select a service provider," along with the FCC's determination within the 6th Report and Order that "Pursuant to sections 254(c)(3), (h)(1)(B), and (h)(2) of the Act, we include dark fiber on the ESL and allow eligible schools and libraries to receive support for the lease of fiber, whether lit or dark, as a priority one service,¹⁰ from **any entity, including but not limited to telecommunications carriers and non-telecommunications carriers...**" then we believe that the district followed through with due diligence in the competitive bidding process and selected the only available provider.

Additionally, the FCC's Order (DA-08-2366A1) supports Hillsboro Independent School District's similar issues. In this order, one funding request was denied for seeking telecommunications from a non-telecommunications carrier. Hillsboro claims that it mistakenly marked "Telecommunications" instead of "Internet Access" on its FCC Form 470. Hillsboro argued that, consistent with the Commission decision in the Bishop Perry Order, the Commission should allow Hillsboro to correct this error. Furthermore, language in the Sixth Report and Order appears to sustain that the FCC would not be in support of denials based on the lack of inclusion within one category or another with the following statement: "For purposes of funding year 2011, we direct applicants to select **either the telecommunications service or Internet access box** on the FCC Form 471 for type of service requested when applying for funding for leased dark or lit fiber, based on the type of provider they select to provide the leased dark fiber service.¹⁴" Lincoln County Schools attempted to select the proper service provider type on their Form 471 application, but were later denied during review.

Request

Considering the FY 2011 470 elicited identical responses from the same vendor, we do not believe the competitive bidding process was compromised by our honest mistake in selecting telecommunications instead of Internet on the 470. Thus, we respectfully request the FCC to grant our appeal and direct USAC to continue processing our application.

We ask the FCC to view the documented evidence that no other telecommunications or Internet Access service providers provider have responded and no other providers exist that could provide service in this rural locale to even compete with the contracted provider, Armstrong, despite the fact that Lincoln County Schools submitted a new Form 470 for funding year 2012, requesting services in **both** categories. Only Armstrong Cable provided a response. No other vendor can provide these Wide Area Network (WAN) services.

The Commission has already established in the Hillsboro School District Order (DA-08-2366A1) a precedent where Hillsboro was found to have made a clerical error on its FCC Form 471. USAC denied one of Hillsboro's funding requests because Hillsboro requested telecommunications services from a service provider that was not a telecommunications carrier. While Hillsboro's FCC Form 470 was properly posted and competitively bid for a request for both Internet access and telecommunications service, the relevant eligible services list allows E-rate participants to receive Internet access through T-1 lines from an Internet service provider, as well as telecommunications services through T-1 lines. The

service provider it selected, Armstrong Communications, for the funding request at issue, was in fact providing Hillsboro with telecommunications services via Ethernet lines rather than just Internet Access services since Internet Access for all West Virginia schools come from the two state Points of Presence (POPs). Lincoln County mistakenly listed Telecommunications service only, instead of including Internet access on its FCC Form 470, but this did not preclude Internet Access providers from responding, nor did a subsequent Form 470 posting with services in both categories result in any Telecommunications providers responding to the bid. As in the Aberdeen School District Order and the Hillsboro Order, this appeal/waiver request involves a clerical error on the part of Lincoln County Schools when it mistakenly left off the Internet Access classification of service on its FCC Form 470. As the Commission has previously noted, we do not believe that such minor mistakes warrant the complete rejection of an applicant's E-rate application. Therefore, to the extent necessary, we also request that Lincoln County Schools be granted a waiver of section 54.503(c) of the Commission's rules of Competitive Bidding Requirements, Posting of FCC Form 470, which requires that "an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502."

We request that Lincoln County Schools be allowed to change their category of service to Internet Access and use the Armstrong Cable SPIN for their Form 471 application and be reconsidered for funding by USAC. This reconsideration would save Lincoln County Schools \$140,646.53 in potential E-rate funding. If denied, the County will be responsible for the FULL cost of the funding requests which will be \$164,283.17 for this funding year. These services benefit the 3,729 students of the district who are utilizing the increased bandwidth to maintain equity in 21st Century digital learning, online testing and rich digital content. With the evidence attached, we respectfully request that Lincoln County School's funding denial by USAC should be overturned by the FCC and reconsidered by USAC based on the unique circumstances for this individual applicant.

Respectfully submitted on May 4, 2012

By: /s/ Dan Dailey
Technology Director
Lincoln County School District

Attachments:

FY 2010 Form 470
FY 2010 Form 470 Competitive Bid (Armstrong)
FY 2010 Form 470 Competitive Bid (Verizon Business)
FY 2010 Competitive Bidding Documentation
FY 2011 Form 470
FY 2011 Form 470 Competitive Bid (Armstrong)
FY 2011 Competitive Bidding Documentation (including memo to file of no other bids)
FY 2011 Armstrong Contract
FY 2011 Funding Commitment Decision Letter
FY 2012 Form 470
FY 2012 Form 470 Competitive Bid (Armstrong)
FY 2012 Competitive Bidding Documentation (including memo to file of no other bids)
FY 2012 Armstrong Contract

FCC Form

Approval by OMB
3060-0806**470****Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and IdentificationsForm 470 Application Number: **960540000761998**Applicant's Form Identifier: **WAN-09-10**Application Status: **CERTIFIED**Posting Date: **08/31/2009**Allowable Contract Date: **09/28/2009**Certification Received Date: **08/31/2009****1. Name of Applicant:****LINCOLN COUNTY SCHOOL DISTRICT****2. Funding Year:****07/01/2010 - 06/30/2011****3. Your Entity Number****126689****4a. Applicant's Street Address, P.O.Box, or Route Number****10 MARLAND AVENUE**

City

HAMLIN

State

WV

Zip Code

25523-1025**b. Telephone number****(304) 824- 3033****c. Fax number****(304) 824- 7947****5. Type Of Applicant**

Individual School (individual public or non-public school)



School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)



Library (including library system, library outlet/branch or library consortium as defined under LSTA)



Consortium (intermediate service agencies, states, state networks, special consortia of schools and/or libraries)

6a. Contact Person's Name: Danny Dailey

First, if the Contact Person's Street Address is the same as in **Item 4** above, check this box. If not, please complete the entries for the Street Address below.

6b. Street Address, P.O.Box, or Route Number**10 MARLAND AVENUE**

City

State

Zip Code

HAMLIN

WV

25523-1025

Check the box next to your preferred mode of contact and provide your contact information. One box **MUST** be checked and an entry provided.

☒ 6c. Telephone Number (304) 824- 3033

☒ 6d. Fax Number (304) 824- 7947

☒ 6e. E-mail Address ddailey@access.k12.wv.us

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):

a. ☐ Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted tariffed or month-to-month services for each funding year.

b. ☒ Services for which a new written contract is sought for the funding year in Item 2.
Check if you are seeking ☒ a multi-year contract and/or ☒ a contract featuring voluntary extensions

c. ☐ A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous funding year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous funding year OR a contract signed on/before 7/10/97 and previously reported on a Form 470 as an existing contract do NOT require filing of a new Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, 10 and/or 11 below), and answer the questions in each category you select.

8 ☒ Telecommunications Services

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a. ☒ YES, I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):

☒ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b. ☐ NO, I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c. ☐ Check this box if you prefer discounts on your bill.

☐ Check this box if you prefer reimbursement after paying your bill in full.

☐ Check this box if you do not have a preference.

Service or Function:

Quantity and/or Capacity:

Construction of a High Bandwidth service (WAN)

WAN for 10 locations with min 10Mb/s - maximum 1 GB per location

9 ☐ Internet Access

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ☐ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):

☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ☐ **NO**, I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c ☐ Check this box if you prefer discounts on your bill.

☐ Check this box if you prefer reimbursement after paying your bill in full.

☐ Check this box if you do not have a preference.

10 ☐ Internal Connections Other than Basic Maintenance

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ☐ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):

☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ☐ **NO**, I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., a router, hub and cabling) and quantity and/or capacity (e.g., connecting 1 classroom of 30 students). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c ☐ Check this box if you prefer discounts on your bill.

☐ Check this box if you prefer reimbursement after paying your bill in full.

☐ Check this box if you do not have a preference.

11 ☐ Basic Maintenance of Internal Connections

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ☐ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):

☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ☐ **NO**, I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Basic Maintenance Services you seek. Specify each **service or function** (e.g., basic maintenance of routers) and quantity and/or capacity (e.g., for 10 routers). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

☒ Check this box if you prefer discounts on your bill.

☐ Check this box if you prefer reimbursement after paying your bill in full.

☐ Check this box if you do not have a preference.

12 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the Authorized Person who signs this form.

Name:

Danny Dailey

Title:

Technology Coordinator

Telephone number

(304) 824 - 3033 extn: 242

Fax number

(304) 824 - 7947

E-mail Address

ddailey@access.k12.wv.us

13a. ☒ Check this box if there are any restrictions imposed by state or local laws or regulations on how or when service providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or a Web address where they are posted and provide a contact name and telephone number.

<http://wvde.state.wv.us/policies/p8200.pdf>

☐ Check this box if no state and local procurement/competitive bidding requirements apply to the procurement of services sought on this Form 470.

13b. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, you may summarize below(including the likely timeframes). If you are requesting services for a funding year for which a Form 470 cannot yet be filed online, include that information here.

Block 3: Technology Resources

14. ☐ **Basic telephone service only:** If your application is for basic telephone service and voice mail only, check this box and skip to Item 16. Basic telephone service is defined as wireline or wireless single line voice service (local, cellular/PCS, and/or long distance) and mandatory fees associated with such service (e.g., federal and state taxes and universal service fees).

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop software: Software required ☒ has been purchased; and/or ☐ is being sought.

b. Electrical systems: ☒ adequate electrical capacity is in place or has already been arranged; and/or ☐ upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers ☒ has been purchased; and/or ☐ is being sought.

d. Computer hardware maintenance: adequate arrangements ☒ have been made; and/or ☐ are being sought.

e. Staff development: ☒ all staff have had an appropriate level of training /additional training has already been

scheduled; and/or ☐ training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

Check the ONE choice (Item **16a**, **16b** or **16c**) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item **17** the entity/entities that will pay the bills for these services.

a. ☐ Individual school or single-site library.

b. ☐ Statewide application for (enter 2-letter state code) representing (check all that apply):

☐ All public schools/districts in the state:

☐ All non-public schools in the state:

☐ All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. ☐ If checked, complete Item 18.

c. ☒ School district, library system, or consortium application to serve multiple eligible entities:

Number of eligible sites	11
<i>For these eligible sites, please provide the following</i>	
Area Codes (list each unique area code)	Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces
304	524,756,778,824,855
681	524,756,778,824,855

17. Billed Entities

17. Billed Entities: List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. If a Billed Entity cited on your Form 471 is not listed below, funding may be denied for the funding requests associated with this Form 470.

Entity	Entity Number
LINCOLN COUNTY SCHOOL DISTRICT	126689

18. Ineligible Participating Entities

List the names of any entity/entities here for whom services are requested that are not eligible for the Universal Service Program.

Ineligible Participating Entity

Area Code

Prefix

Block 5: Certification and Signature

19. ☒ I certify that the applicant includes:(Check one or both.)

a. ☒ schools under the statutory definitions of elementary and secondary schools found in the **No Child Left Behind Act of 2001, 20 U.S.C.Secs.7081(18) and (38), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or**

b. ☐ libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

20. ☒ I certify that all of the individual schools, libraries, and library consortia receiving services under this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, an SLD-certified technology plan approver, prior to the commencement of service. The plans were written at the following level(s):

a. ☒ individual technology plans for using the services requested in the application, and/or

b. ☒ higher-level technology plans for using the services requested in the application, or

c. ☐ no technology plan needed; application requests basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only

21. ☒ I certify that I will post my Form 470 and (if applicable) make my RFP available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals. I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the status and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

22. ☒ I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the entity or entities listed on this application have not received anything of value or a promise of anything of value, other than the services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.


23. ☒ I acknowledge that support under this support mechanism is conditional upon the school(s) and/or library(ies) I represent securing access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support.

24. ☒ I certify that I am authorized to order telecommunications and other supported services for the eligible entity (ies). I certify that I am authorized to submit this request on behalf of the eligible entity(ies) listed on this application, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. ☒ I certify that I have reviewed all applicable state and local procurement/competitive bidding requirements and that I have complied with them. I acknowledge that persons willfully making false statements on this form can be punished by fine or forfeiture, under the Commissions Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

26. ☒ I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to

suspension and debarment from the program.

27. Signature of authorized person: 

28. Date (mm/dd/yyyy): **08/31/2009**

29. Printed name of authorized person: **Danny Dailey**

30. Title or position of authorized person: **Technology Coordinator**

31a. Address of authorized person: **10 Marland Ave.**

City: **Hamlin** State: **WV** Zip: **25523**

31b. Telephone number of authorized person: **(304) 824 - 3033** ext. **242**

31c. Fax number of authorized person: **(304) 8247947**

31d. E-mail address number of authorized person: **ddailey@access.k12.wv.us**

31e. Name of authorized person's employer: **Lincoln County School District**

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the SLD web site at www.sl.universalservice.org or call the Client Service Bureau at 1-888-203-8100.

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of any applicable statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, information provided in or submitted with this form or in response to subsequent inquiries may also be subject to disclosure consistent with the Communications Act of 1934, FCC regulations, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

SLD-Form 470

**P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100**

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:

**SLD Forms
ATTN: SLD Form 470
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100**

FCC Form 470
November 2004

New Search

Return To Search Results

ARMSTRONG®

FY 2010 Armstrong Bid
Response

December 22, 2009

Mr. Danny Dailey
Technology Director
Lincoln County Schools
10 Marland Avenue
Hamlin, WV 25523

Dear Mr. Dailey,

The following information is in response to the recently received RFP for the provision of High Speed "Point to Point" Capacity to those schools within the Lincoln County School network and Armstrong's service foot print, ten schools total. The quoted monthly recurring pricing (MRC) in our proposal will be applied and charged on a per school / per month basis.

Note: Installation cost to be determined for all Armstrong serviceable school locations.

As requested in the RFP, is an example of the Armstrong Capacity Lease Agreement for your review. Many of the bullet points in the RFP are addressed within the language of our agreement. Please contact me if you require additional information or clarification after you review the Armstrong Capacity Service Agreement.

There are however a couple of bullet points that can be addressed within the context of this letter, they are as follows.

- Turn-key solution - Armstrong will provide the required installation to each demarcation point at each school. Also, Armstrong will provide the necessary equipment to facilitate "point to point" bandwidth capacity service, over fiber optic connections from Lincoln County High School to the other school locations as identified in the RFP. **Note:** It will be the responsibility of Lincoln County Schools to have in place the necessary equipment to interface with Armstrong's equipment at any site demarcation point.
- SPAC Form - Armstrong maintains a Service Provider Annual Certificate, form 473 and will provide the Armstrong "Spin" number to Lincoln County Schools upon execution of the service agreement.

Armstrong appreciates the opportunity to submit its proposal to Lincoln County Schools for consideration for this project.

Please feel free to contact me with any questions you may have after you review the enclosed information.

Sincerely,



Robert Maker
Enterprise Solutions Manager
Armstrong 724-283-3692 ext. 50325

ARMSTRONG®

Lincoln County School High

(Point to Point) Capacity/Bandwidth Pricing Proposal

The following pricing with the exception of any one time installation charge, will be billed on a per month basis, per end point or site.

Monthly Recurring Cost / **One Year** Contract Term:

5Meg - \$1400

10Meg - \$1750

20Meg - \$2100

30Meg - \$2500

100Meg - \$3550

Capacity service can only be increased during the term of the agreement. It can be increased at anytime in increments of 10Meg above the start point of 5Meg. This will however require revising and signing a new service agreement to reflect the increased capacity and the subsequent monthly rate increase for the additional capacity.

NOTE: The following two (2) school locations **are not serviceable** by Armstrong:

- Duval PK-8 - PO Box 67, Griffithsville, WV 25521
- Midway - Rt. 1, Box 130, Plum Creek, WV 25503

ARMSTRONG®

Armstrong Network Operation Center Overview

- Monitored and Staffed 24x7x365
- Real-time monitoring of all production network elements deployed in Armstrong's network
- Maintains database of all active Commercial accounts to include subscriber locations and emergency contacts
- Maintains an internal trouble ticketing/tracking system for problem reporting, change management and problem escalation
- Responsible for 24x7 on-call Network Support technicians (Tier 1,2 and 3 technical support)
- Responsible for 24x7 on-call Field Technical support including Service and Construction maintenance
- Manages Service Provider and vendor support relations, trouble reporting and escalations

COMMERCIAL SERVICE AGREEMENT

This Commercial Service Agreement (this “**Agreement**”) is made this _____ day of _____, 2009 by and between Armstrong Utilities, Inc. (“**Armstrong**”) whose principal offices are located at One Armstrong Place, Butler, PA 16001 and _____ (the “**Subscriber**”) whose address is _____.

Whereas, Armstrong owns and/or has access to networks, equipment and services and is in the business of providing network services to customers; and

Whereas, Subscriber desires to obtain certain network services from Armstrong, and Armstrong desires to provide the network services to Subscriber pursuant to the terms and conditions of this Agreement.

And Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Services Provided to Subscriber. Armstrong shall provide Subscriber with exclusive right to use _____ (____) mega bits per second of connectivity point to point (the “**Private LAN Service**”) as more fully described in Exhibit A, attached hereto (the “**Services**”).

2. Fees; Payment.

a. Subscriber shall pay to Armstrong a one-time installation charge of _____ Dollars (\$_____.00) (the “**Installation Fee**”).

b. Subscriber shall further pay to Armstrong a monthly fee of _____ Dollars (\$_____.00) (the “**Monthly Fee**”). After the Initial Term, the Monthly Fee may be adjusted by Armstrong, in its sole discretion, each year on the annual renewal date. In the event that Armstrong chooses to adjust the Monthly Fee as of a given annual renewal date, Armstrong shall provide Subscriber with notice of the new Monthly Fee at least sixty (60) days in advance of the annual renewal date.

c. Subscriber shall be solely responsible for all federal, state, or local taxes (other than those taxes attributable to Armstrong’s income), regulatory charges, franchise fees, or similar assessments associated with the fees described in Sections 2.a. and 2.b.

d. Subscriber shall pay the Installation Fee in one (1) lump sum within five (5) days of acceptance of the Services pursuant to the procedure described in Exhibit A.

e. Following Subscriber’s acceptance of the Services, Armstrong shall provide Subscriber with a monthly invoice for the Monthly Fee. The Monthly Fee will be due on the date indicated on the invoice.

f. If any amount due to Armstrong hereunder is not paid in accordance with the terms hereof, Subscriber shall pay interest on such past due amounts at the lesser of (i) one and five tenths percent (1.5%) or (ii) the maximum interest rate permitted by applicable law.

g. In the event that any unpaid balance is more than thirty (30) days in arrears, Armstrong may discontinue the Services until full payment of any unpaid balance has been received. Upon receipt of such payment, the Services will be restored within five (5) business days. In the event that any unpaid balance is more than ninety (90) days in arrears, or in the event that Subscriber is more than thirty (30) days in arrears more than three (3) times in any twelve (12) month period, Armstrong shall be entitled to (i) terminate this Agreement and the provision of the Services immediately upon notice to Subscriber and (ii) pursue any other remedies which may be available to it under law or equity. In addition to any other remedy to which it may be entitled, in the event that Armstrong terminates the Agreement pursuant to this Subsection, any and all monies that may be due to Armstrong for the balance of the then-current term shall become immediately due and payable and Armstrong shall be entitled to collect such sum.

3. Term. Unless earlier terminated in accordance with the terms of this Agreement, the term of this Agreement shall be for a period of _____ (____) years beginning on the Commencement Date (as defined in Exhibit A) (the “**Initial Term**”). After the Initial Term, this Agreement shall automatically renew for successive one (1) year terms unless and until either of the parties provides the other party with written notice of its intent not to renew at least thirty (30) days in advance of the annual renewal date.

4. Title to Equipment and Facilities; Access.

a. Armstrong Equipment.

i. Title to all equipment and other facilities provided by Armstrong that are used in connection with the Services (the “**Armstrong Equipment**”) shall remain vested in Armstrong including, but not limited to, the physical fiber plant, and such title shall remain vested in Armstrong even after the termination or expiration of this Agreement.

ii. Except as may be provided in Exhibit A, no portion of the Armstrong Equipment shall be considered a fixture or an addition to Subscriber’s property. Subscriber agrees that it will take no action that impairs Armstrong’s title to the Armstrong Equipment or exposes Armstrong to any claim, lien, encumbrance or legal process.

iii. Armstrong may, in its sole discretion, from time to time, for maintenance or other purposes, make changes, adjustments, replacements or other modifications to the Armstrong Equipment.

iv. In the event of expiration or termination of this Agreement, Armstrong may remove all or any portion of the Armstrong Equipment located in or on Subscriber’s property within one hundred eighty (180) days of the cessation of the Services. If Armstrong removes any portion of the Armstrong Equipment, it shall restore Subscriber’s property to substantially its prior condition, normal wear and tear excepted.

v. Subscriber agrees to provide Armstrong with access to the Armstrong Equipment at such times and on such dates as Armstrong may reasonably request. Such request shall be made at least twenty-four (24) hours in advance unless an emergency situation prevents such advance notice, in which case Subscriber shall provide access to Armstrong as soon as practicable under the circumstances.

b. **Subscriber Equipment.**

Title to all equipment and facilities provided by Subscriber that are used in connection with the Service (the “**Subscriber Equipment**”) shall remain vested in Subscriber. Armstrong shall not be responsible for the provision, installation, repair or maintenance of the Subscriber Equipment. Notwithstanding the foregoing, in the event that Armstrong reasonably needs to access the Subscriber Equipment in order to provide the Services or maintain the Private LAN Service, Subscriber shall either (i) provide Armstrong with such access or (ii) assign a Subscriber employee, agent or contractor to access the Subscriber Equipment at and under the direction of Armstrong.

5. Installation; Maintenance; Interruption of Service.

a. Armstrong shall install any necessary Armstrong Equipment and perform such other actions or services as are needed to commence the Service on such date or dates as are mutually agreeable to Subscriber and Armstrong.

b. If asbestos or other hazardous materials exist on Subscriber’s property, Subscriber shall have the materials removed or notify Armstrong to perform any necessary installations or modifications in areas not containing such materials.

c. Subject to the limitations described elsewhere in this Agreement, Armstrong shall provide all necessary maintenance of, and repairs to, the data network (or related facilities) over which it is providing the Private LAN Service as soon as reasonably possible following any notice of an outage or failure in respect of the data network, except to the extent that any such repair or replacement arises from the negligent or willful acts or omissions of Subscriber, its agents, representatives, employees, licensees, invitees and/or contractors, in which case Subscriber shall be responsible for, and pay the costs incurred for, restoration of the damaged data network (or related facilities).

d. In the event that Subscriber is aware of a network failure, Subscriber will notify Armstrong at its Technical Support Center – (866) 483-9127.

e. Armstrong will use reasonable efforts to remedy any delays, interruptions, omissions, mistakes, accidents or errors with respect to the provision of the Private LAN Service.

f. Armstrong may, from time to time, conduct planned maintenance of the Private LAN Service. Subscriber acknowledges that access to the Private LAN Service may be disrupted during these maintenance periods. Armstrong shall use reasonable efforts to schedule any such planning maintenance so as to minimize the disruption to Subscriber’s operations, provided, however, that Armstrong may, in its discretion, schedule such interruptions during normal business hours.

g. Subscriber agrees to provide Armstrong with access to the data network (or related facilities) and to Subscriber's documents and records pertaining to the data network (or related facilities) including, but not limited to, the Subscriber Equipment, at such times and on such dates as Armstrong may reasonably request in order to provide the Services including, but not limited to, the maintenance required by this Agreement. Such request shall be made at least twenty-four (24) hours in advance unless an emergency situation prevents such advance notice, in which case Subscriber shall provide access to Armstrong as soon as practicable under the circumstances.

h. Except as otherwise provided in this Agreement, Armstrong shall not be liable to the Subscriber for any interruption in service or outage related to the fiber carrying the Private LAN Service or the Private LAN Service itself.

i. **NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, ARMSTRONG DOES NOT GUARANTEE OR WARRANT ERROR-FREE OR INTERRUPTION-FREE SERVICE ON ITS DATA NETWORK.**

6. Permits, Easements. In the event that one (1) or more building, electrical or other local, state or federal permits is required before or during the commencement of the Services, Subscriber shall be responsible for obtaining and paying for such permit(s). Furthermore, Subscriber shall be responsible for obtaining any easements, leases or other agreements relating to the use of Subscriber's property that may be necessary in order for Armstrong to provide the Services. Armstrong shall cooperate with and provide Subscriber with any and all information which Subscriber may reasonably need from Armstrong in order to obtain such permit(s), easements, leases or other agreements.

7. Non-Exclusive Access to Network. Subscriber acknowledges that portions of the Service may be provided over shared transport facilities used to support Armstrong's operations or those of its other customers.

8. Use of the Network.

a. Subscriber agrees that its use of the Private LAN Service shall comply with, and that it shall cause anyone who uses or accesses the Private LAN Service (each a "User" and collectively the "Users") to comply with, the terms of Armstrong's then current Acceptable Use Policy, which may be accessed at <http://support.armstrongonewire.com/policy.aspx> and is incorporated herein by reference.

b. Armstrong will not provide support directly to, nor interface with, any person in its capacity as a User. Subscriber is responsible for (i) selecting the Users it permits to access the Private LAN Service, (ii) implementing with its Users appropriate terms, conditions and measures to ensure that all Users comply with the applicable terms and conditions of this Agreement, and (iii) establishing Users' rights to access the Private LAN Service. Subscriber must maintain with its Users an agreement that will establish and govern the legal relationship between Subscriber and its Users. That agreement must provide that Armstrong's liability to each User is limited to the same extent that Armstrong's liability to Subscriber is limited under this Agreement. Subscriber shall indemnify and hold harmless Armstrong for any and all claims,

damages, suits or other liabilities that may arise due to or related to Subscriber's failure to comply with this Subsection.

9. Limitations on Warranties and Liability.

a. **WARRANTY DISCLAIMER.** ARMSTRONG DISCLAIMS ALL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, AND SUBJECT TO THE LIMITATIONS IN THIS AGREEMENT, ARMSTRONG SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DAMAGES SUFFERED BY SUBSCRIBER, ITS USERS OR ANY THIRD PARTY, EXCEPT FOR THOSE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ARMSTRONG.

b. **LIMITATIONS ON DAMAGES.**

i. **IN NO EVENT WILL ARMSTRONG BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF CUSTOMERS OR CLIENTS, LOSS OF GOODWILL OR LOSS OF PROFITS ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY OBLIGATION, WHETHER ARISING OUT OF CONTRACT OR TORT.**

ii. For the purposes of this Subsection, a "Lapse" shall be any one or more of the following: a mistake, error, omission, interruption, delay, outage or defect in the transmission or other performance of any Service which is not caused by force majeure or by Subscriber. Armstrong's sole liability for any Lapse which (i) is not remedied within twenty-four (24) hours and (ii) is not coincident with any other Lapse, shall be a refund to Subscriber of the pro rata portion of the applicable Monthly Fee for the period of the Lapse. Notwithstanding the foregoing, such pro rata refund is available to the Subscriber only if (i) the Lapse is reported by Subscriber during the duration of the Lapse and (ii) the Subscriber requests such refund.

iii. Notwithstanding any provision of this Agreement to the contrary, in no event shall Armstrong be liable for damages of any type in excess of the aggregate monthly fees for the twelve (12) month period preceding the event giving rise to the relevant claim or cause of action.

c. Armstrong assumes no responsibility should any third party access the Private LAN Service or any information on, or accessible through, the Private LAN Service, regardless of whether such access is accidental, malicious or otherwise.

10. Indemnification. During the term of this Agreement, each party shall indemnify and hold harmless the other party together with their parent companies, subsidiaries, affiliates, directors, officers, agents and employees from any and all loss, damage, expense, cost (including court costs and attorney's fees), judgment, lien, suit, cause of action, demand or liability for

personal injury, including death and tangible property damage, which may be imposed on or incurred by one party (“**Indemnitee**”) arising out of the negligent acts or omissions of the other (“**Indemnitor**”), its agents, subcontractors or employees during the performance of any work hereunder. The Indemnitor shall, at its sole expense, defend any suit based upon a claim or cause of action and satisfy any judgment that may be rendered against the Indemnitee resulting therefrom, provided that the Indemnitor shall be given (a) prompt notice of any such claim or suit; (b) the Indemnitor shall have sole control of the defense and all related settlement negotiations; and (c) the Indemnitee gives the Indemnitor full cooperation, information and assistance for the defense. The Indemnitor will not be responsible for any settlement made without its prior written consent or for any costs, expenses or fees incurred by the Indemnitee without the Indemnitor’s prior written consent, which shall not be unreasonably withheld. The Indemnitee may, at its election and at its own expense, participate in the defense. The Indemnitor shall pay all costs, expenses and reasonable attorney’s fees in connection with any claim or suit brought by Indemnitee in enforcing this Indemnity provision, provided a valid claim is presented.

11. Default. Except as otherwise provided in this Agreement, a party is in default under this Agreement if it fails to perform any material provision of this Agreement and the failure remains uncured for thirty (30) days following written notice from the non-defaulting party (provided, however, that if a party undertakes to cure a default within thirty (30) days and such default is not reasonably curable within thirty (30) days, then such party shall not be deemed to be in default so long as such party diligently pursues a cure to the default and ultimately cures the default). If a party fails to cure a default within the required time period under this Section, the non-defaulting party may (i) terminate the Agreement immediately upon notice to the breaching party and/or (ii) pursue all other remedies available to it under law or equity.

12. Termination. In addition to the other termination provisions in this Agreement, this Agreement may be terminated (a) by the mutual consent of the parties or (b) by Armstrong, upon reasonable notice given the circumstances (which in no event shall be deemed to be greater than thirty (30) days) in the event that Armstrong no longer offers the Services within the area where Subscriber’s property is located.

13. Force Majeure. Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, earthquake, power outages, strike, embargo, government requirement, civil or military authorities, acts of God or by the public enemy, transportation facilities, acts or omissions of carriers or other condition beyond the reasonable control of a party. In the event of such delay or inability to perform, the affected party shall give immediate notice to the other party and the party affected may suspend this Agreement for the duration of the force majeure condition and resume performance under this Agreement once the force majeure condition ceases.

14. Notices. All notices and other communications provided for hereunder shall be in writing and shall be personally delivered or mailed or sent to each party as set forth below or at such other address or in such other manner as may be designated by such party in written notice to the other party. All such notices and communications shall be effective when delivered in

person or transmitted by telecopier or upon receipt after dispatch by certified or registered first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made:

If to Armstrong: One Armstrong Place
Butler, PA 16001
VP - Operations
Telephone: (724) 283-0925

If to Subscriber:

Attn:
Telephone:

15. No Third-Party Beneficiaries. Nothing herein, express or implied, is intended to, nor shall, confer on any person other than the parties hereto, any rights, remedies, obligations or liabilities under, or by reason of, this Agreement.

16. Entire Agreement. This Agreement, including its exhibits and attachments, contains the entire agreement of the parties hereto and supersedes all prior or contemporaneous agreements and understandings, oral or written, express or implied, between the parties hereto as of this date and with respect to subject matter hereof.

17. Amendment. No amendment or modification of any provision of this Agreement shall be effective unless the same shall be in writing and signed by all of the parties hereto.

18. Successors and Assigns. This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefits of, the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, neither party may assign its rights in or delegate its duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. No such consent shall be required if the assignment is to an affiliate of the assigning entity, and no such consent shall be required if the assignment is in connection with the sale of all or substantially all of the assets of the assigning party.

19. Governing Law. This Agreement shall be deemed to be a contract made under and shall be construed, interpreted, governed and enforced in accordance with the laws of the

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

21. Headings. The headings to the paragraphs of this Agreement are intended solely for the convenience of the parties and shall in no way be held to explain, modify, amplify or aid in the interpretation of the provisions hereof.

22. Severability. The provisions of this Agreement shall be deemed severable and if any portion hereof shall be held invalid, illegal or unenforceable for any reason, the remainder shall not be invalidated but shall remain in full force and effect.

23. Waiver; Remedies Cumulative. No waiver of any provision of this Agreement by any party shall be valid unless in writing and signed by the party against whom the waiver is charged. The waiver of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision or any other provision. Remedies herein provided are cumulative and not exclusive of any other remedy provided by law.

24. Non-Disclosure. All prices, terms and conditions associated with this Agreement are proprietary to Armstrong and will not be disclosed by the Subscriber.

25. Compliance with Laws. All Services provided by Armstrong shall comply with applicable local, state and federal laws, regulations and ordinances, and with applicable and commonly accepted industry standards.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year first above written.

ARMSTRONG UTILITIES, INC.

By: _____

By: _____

Its: _____

Its: _____

Lincoln County Schools
Broadband RFP Response

Response

Verizon's Broadband capabilities in Lincoln County WV are limited in two ways. First, Verizon is not the sole ILEC provider for the county, so providing fiber connectivity to the required locations which are not in Verizon's territory is not possible at this time. Second, the fiber infrastructure needed to deploy a broadband network is not currently present and would be very costly to deploy. Therefore, Verizon is responding to this RFP by providing Lincoln County Schools a design and pricing for the broadband capability currently available in the area. These capabilities can be acquired by Lincoln County Schools from the existing State of WV MPLS07 contract. All pricing and configuration attached to this response will abide by the guidelines set in the State of WV MPLS07 contract.

Broadband Capability

School and Board Facilities:

Verizon has provided three pricing scenarios for each facility listed on the RFP. The same option does not have to be purchased at each location. The schools can decide to have any combination of the three scenarios.

The first scenario would give a total of 6.144Mbps of bandwidth to the site. This is accomplished by Verizon placing four 1.536Mb T1s at the location and bonding them together using MLPP layer 2 technology. The pricing for this scenario includes 1.536Mbps of Gold CAR (Please see below for detail). A router will need to be purchased for this scenario that will handle four T1s, a Cisco 2821 model router is recommended at a minimum.

The second scenario would give a total of 10.752 Mbps of bandwidth to the site. This is accomplished by Verizon placing seven 1.536Mb T1s at the location and bonding them together using MLPP layer 2 technology. The pricing for this scenario includes 1.536Mbps of Gold CAR (Please see below for detail). A router will need to be purchased for this scenario that will handle seven T1s, a Cisco 2851 model router is recommended at a minimum.

The third scenario would give a total of 44.184 Mbps of bandwidth to the site. This is accomplished by Verizon placing a DS-3 at the location. The pricing for this scenario includes 1.536Mbps of Gold CAR (Please see below for detail). A router will need to be purchased for this scenario that will handle seven T1s, a Cisco 2851 model router is recommended at a minimum. The installation cost will need to be determined if this option is considered. This option will be limited by Verizon's infrastructure capability for each location choosing this option.

WVNET Facility – Charleston WV:

Verizon has provided two pricing scenarios for Building 6, 1900 Kanawha Blvd E, Charleston WV.

The first scenario would give a total of 50Mbps of bandwidth to the site. This is accomplished by Verizon placing one 100 Mb Ethernet circuit at the facility. The pricing for this scenario includes 5.008 Mbps of Gold CAR (Please see below for detail). This is a standard RJ-45 Electrical handoff and can connect directly into the Cisco 6513 located in Building 6.

The second scenario would give a total of 100Mbps of bandwidth to the site. This is accomplished by Verizon placing one 1 Gb Ethernet circuit at the facility. The pricing for this scenario includes 5.008 Mbps of Gold CAR (Please see below for detail). This is a standard fiber Ethernet handoff and can connect directly into the Cisco 6513 located in Building 6. This circuit can be expanded up to 500 Mbps of total bandwidth in the future.

Both of these scenarios require an installation fee of \$1,800.

MPLS Network (Private IP)

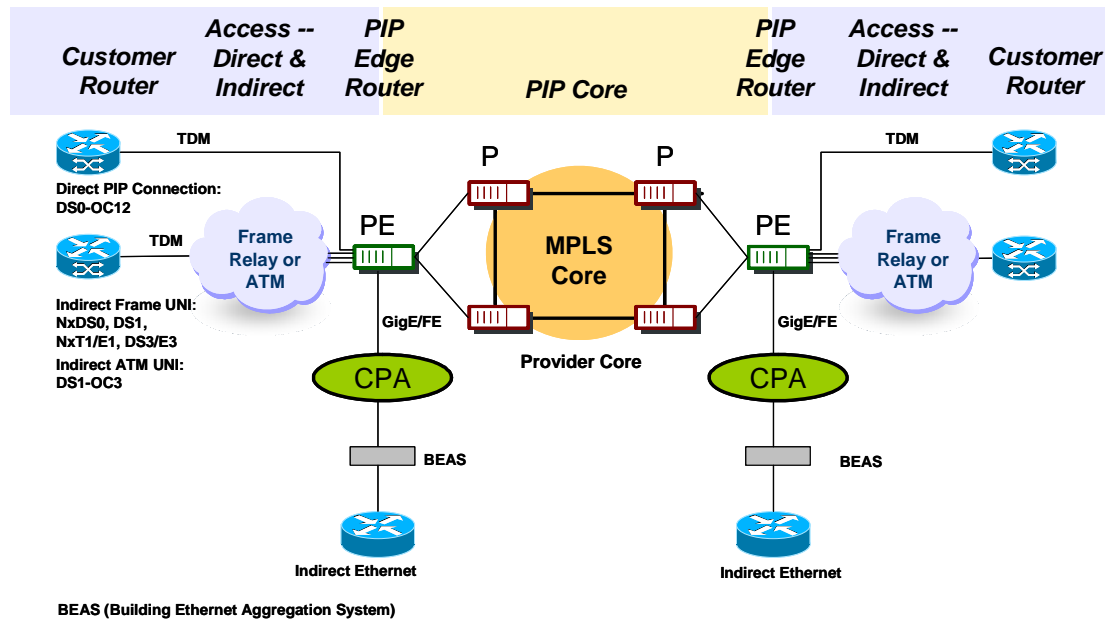
The following is a brief description of the Verizon's state of West Virginia Multiprotocol Label Switching (MPLS) Network.

Overview

Private IP (PIP) is Verizon's network-based IP VPN service that offers customers the best of both worlds – the any-to-any connectivity of IP services and the privacy and quality of service (QoS) of traditional Layer 2 services. When PIP was initially launched, a key selling point for PIP was the ability for customers to leverage their existing Frame Relay connection and CPE to indirectly access PIP via any of Verizon's Frame Relay. Today, while indirect access remains an important access method, connecting customers directly to the PIP platform, e.g. direct access, is quickly becoming the preferred access method.

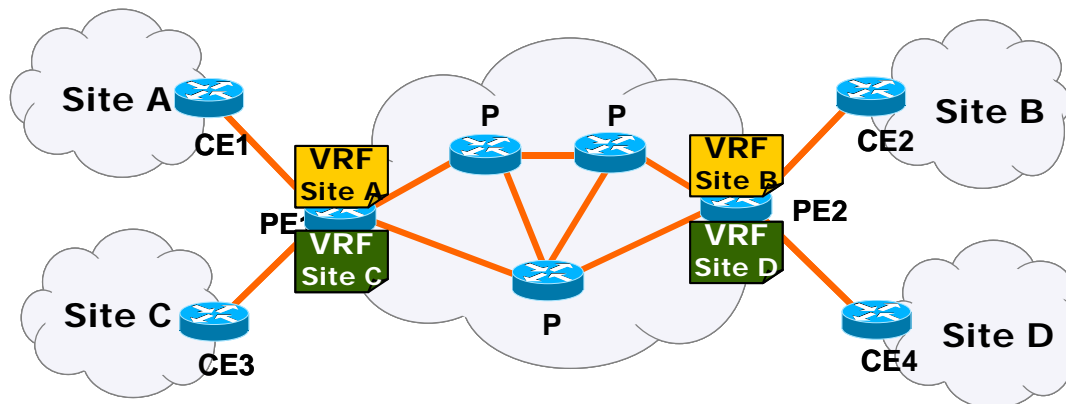
Private IP is a Cisco Powered network based on Cisco's implementation of the IETF's RFC 4364bis. PIP uses IP-over-MPLS (Multi-Protocol Label Switching) technology in conjunction with Multiprotocol BGP (MBGP) to deliver IP VPN services to its customers. While MPLS was initially deployed as a traffic-engineering tool for IP backbones, it is now enjoying widespread deployment as the enabling technology for edge services like IP VPNs that require strict separation of customer IP traffic and value-add features like DiffServ-compliant classes of service and multicast virtual private networks (MVPN).

Verizon's Private IP service is based on Cisco's 10008 ESR and GSR 12816 router platforms. In the United States the PIP Provider Edge (PE) routers are trunked across a dedicated Cisco GSR 12816-based P-core using OC48/STM16 POS circuits. Customers access the PIP network either via direct connections to the PE router or indirectly via Verizon's Frame Relay networks. The diagram below depicts the high level architecture of the PIP network:



MPLS VPN Standards Architecture Model

The PIP service is based on RFC 4364 which describes a method by which a Service Provider (SP) may use an IP backbone to provide IP VPN (Virtual Private Network) services for its customers. In the case of PIP, the VPN service is provided across a closed private IP infrastructure. The diagram below depicts the key physical and logical components that comprise a classical RFC 4364 based network. In PIP, the Provider Core (P) and Provider Edge (PE) functions are implemented on separate dedicated routers.



- Customer Edge (CE) Router

The CE router is the IP router at the customer's site that connects to the PE router. The CE is a routing peer of the PE but it is NOT a routing peer of CE routers at other sites in the customer's VPN. CE devices are logically part of a customer's VPN and do not participate in the Service Provider's backbone routing. The CE is not MPLS-aware; it simply runs standard IP and advertises IPv4 routes to the PE.

- Provider Edge (PE) Router

The PE router resides in the Service Provider's (SP) backbone and implements the network-based VPN functionality defined in RFC 4364. The PE learns IPv4 routes from the CE, usually via a dynamic routing protocol, and stores them in a separate VRF (VPN routing and forwarding) instance for each connected CE interface. An 8-byte Route-Distinguisher (RD) is prepended to every IPv4 address to create globally unique VPN-IPv4 addresses. The PE uses Multiprotocol BGP to distribute VPN-IPv4 routes to other PE's over MPLS LSPs.

Verizon assigns a registered /30 address pair for the CE-PE interface. The customer will be provided the /30 address to be assigned to the WAN interface on his CPE router. Alternatively, the customer may elect to provide the /30 out of his own registered IP address space. However, private, non-registered addresses may not be used.

- VPN Routing and Forwarding (VRF) Table

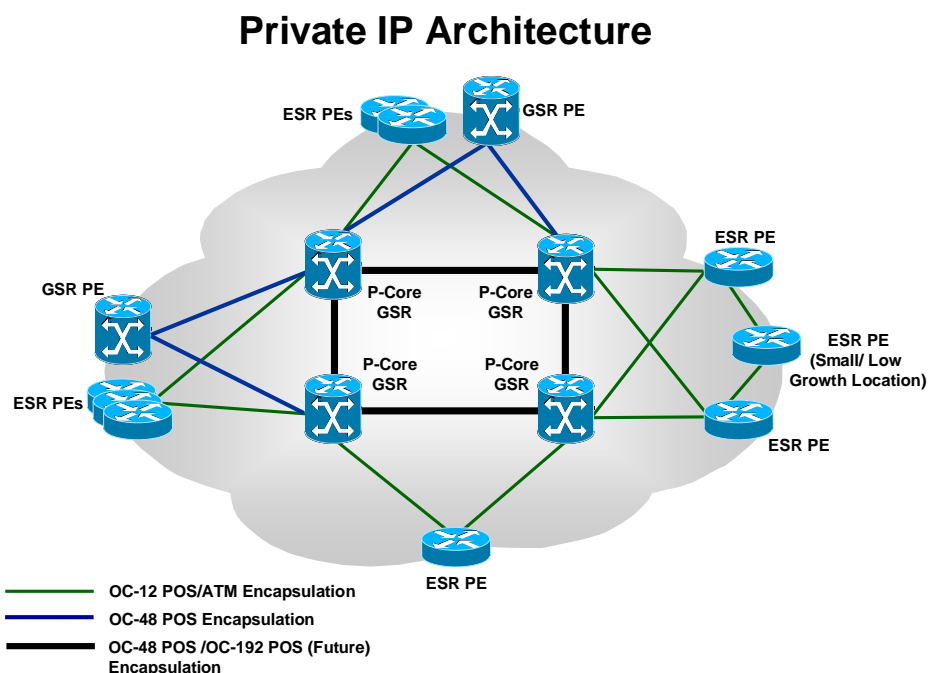
The VRF is effectively a separate routing table per customer VPN and many VRFs exist in every PE. VRF membership is determined based upon the ingress interface on the PE.

- Provider (P) Router

P routers are routers in the SP backbone which do not connect to CE routers. In most cases the P routers form the core of the SP's network. P routers are not VPN aware, e.g. do not hold any VPN-IPv4 routes, and only forward MPLS labeled packets between PE's.

Verizon's Private IP Network Architecture

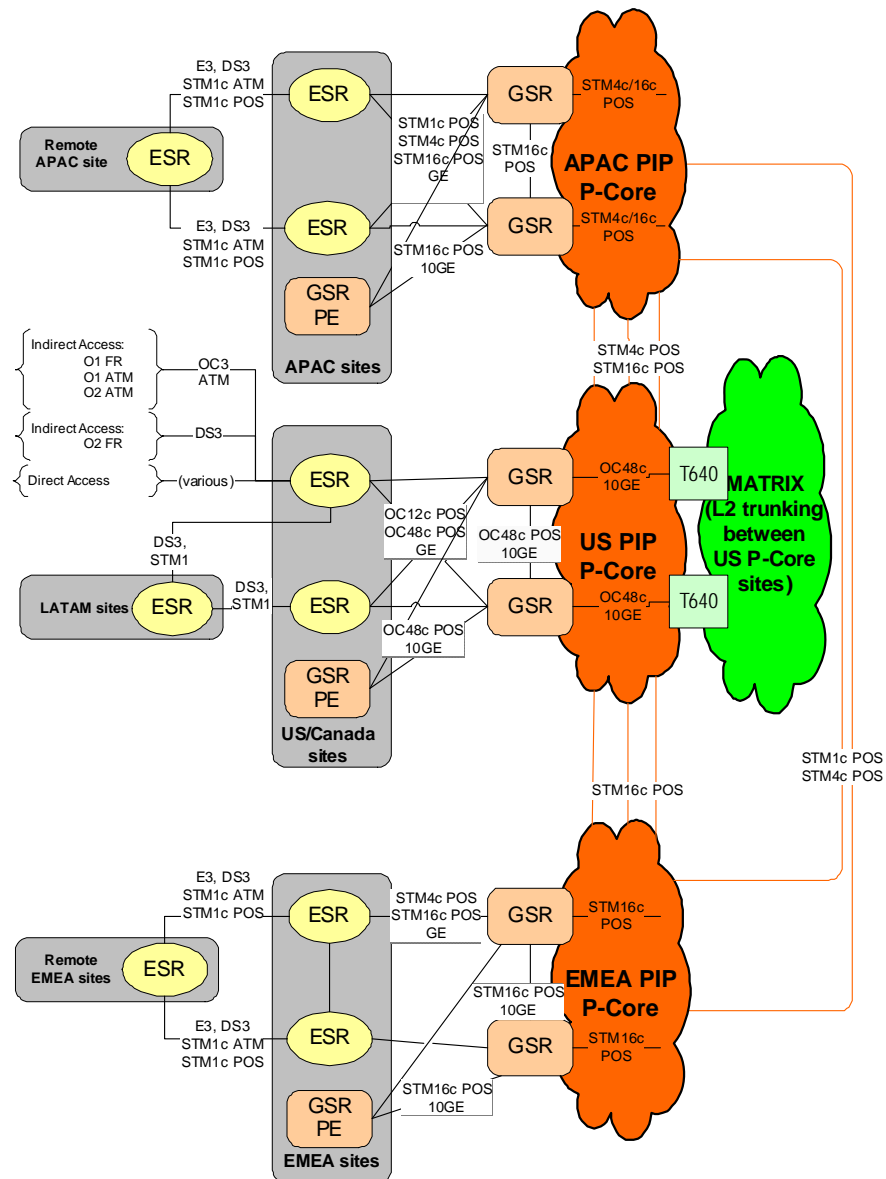
The Private IP architecture utilizes Cisco 10008 ESR and GSR 12816 routers serving as Provider Edge (PE) routers and GSR 12816's serving as the Provider (P) routers as depicted in the diagram below:



The Cisco ESR 10008 is utilized as the standard PE device for direct access connections from 56k to OC-3 and Fast Ethernet. The ESR also has gateway trunks (indirect access) established to other Verizon services such as DSL access networks, Verizon Satellite Network, Network Based Remote Access Service Platform (aka Secure Gateway), Verizon VoIP Platform, and traditional Frame Relay and ATM service platforms. The GSR 12816 is being deployed as both a backbone (P-router) and a high speed access PE router for current and future direct access connections that include OC-3 POS, OC-12 POS, OC-48 POS, and Gigabit Ethernet connections.

Verizon's Private IP Backbone Topology

The diagram below depicts the global PIP backbone topology which is described in more detail in the following paragraphs.



Verizon's PIP backbone topology has been engineered to enhance resiliency and reduce failover times. The P-core, currently deployed in the USA and Europe, is a closed private MPLS backbone, i.e. no Internet connectivity that is dedicated solely to MPLS Label Switching and does not support any direct customer access connections. Using a dedicated P-core enhances network scalability by reducing OSPF adjacencies, reducing the number of routes through summarization, and provides a high-speed backbone for PE trunk aggregation.

In the USA, all PE routers are diversely trunked using dual uplinks (OC12 for ESR and OC48 for GSR PE) into two diverse P-core routers. Dual Cisco GSR 12816 routers are deployed at each P-core site and diversely trunked using OC48 POS (Packet over SONET) or 10GigE trunks. Layer 1/2 transport is predominately implemented over the MATRIX and augmented with a few dedicated point-to-point OC48 POS trunks. Every P-core router has at least 2 physically diverse SONET paths to other P-core sites to insure a node will never be isolated.

Both the PE and P-core trunks are QoS-enabled with a Layer 3 QoS scheme that utilizes LLQ (Low Latency Queuing) and CBWFQ (Class-Based Weighted Fair Queuing) to enable QoS on a per hop basis which delivers end-to-end QoS.

The Verizon PIP network can automatically detect and dynamically reroute around transmission path failures. The OSPF routing protocol is used within the PIP network to establish and maintain IP reachability. OSPF reroute times will vary depending on where the path fails (immediate for local physical failure and dead timer interval for remote failures) and the number of prefixes. LDP (Label Distribution Protocol) is used to dynamically establish LSPs (Label Switched Paths) between all PE and P routers and will automatically re-establish the LSP following an OSPF rerouting event.

Verizon's Private IP Access Methods

Access to PIP service can be provided using any of the following methods:

- Direct access

Direct access typically uses an access line from a Local Exchange Carrier (LEC) directly from a customer's site into the nearest Verizon POP with on-net backhaul as required to the closest Private IP node. Ethernet access is supported via the SES Network. Direct access is supported for the following Layer 2 encapsulations: Frame Relay, ATM, PPP, HDLC, MLPPP (Multilink PPP) and Sub-Rate E3/DS3.

- Indirect Frame Relay Access

Indirect access uses Verizon Frame Relay as the access method to the Private IP network. PIP access is established by building a PVC from the customer's UNI port across the Frame Relay network to an NNI into the PIP PE router. If a customer is converting from Frame Relay to Private IP, this access method may be used as an alternative, if the preferred direct access is not available within the metro area.

- Fast Ethernet and Gigabit Ethernet Access

The method for providing local Ethernet access to the PIP Network for the state of West Virginia is through Verizon's SES Network. Customers may subscribe to the full FE port at line rate or any of a range of tiered 802.1q VLAN speeds. The full PIP feature